



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Parts 136 and 142**

**[Docket No. USCG-2017-1060]**

**RIN 1625-AC43**

**Harmonization of Fire Protection Equipment Standards for Towing Vessels**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

---

**SUMMARY:** The Coast Guard is finalizing an interim final rule that applied the changes made by the 2016 final rule, “Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment,” to inspected towing vessels. The interim final rule, published February 26, 2018 in the **Federal Register**, aligned fire protection and equipment regulations for inspected towing vessels with other commercial vessel regulations. The Coast Guard received no comments on the interim rule, and adopts the interim final rule with one clarification.

**DATES:** This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Documents mentioned in this preamble are available in the public docket by going to <http://www.regulations.gov>, typing USCG-2017-1060 in the “SEARCH” box and clicking “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** For information about this document,

call or e-mail LT Alexandra Miller, Office of Design and Engineering Standards,  
Lifesaving and Fire Safety Division (CG-ENG-4), Coast Guard; telephone 202-372-1356,  
e-mail *Alexandra.S.Miller@uscg.mil*.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents for Preamble**

- I. Abbreviations
- II. Background Information, Legal Authority, and Discussion of Change
- III. Regulatory Analyses
  - A. Regulatory Planning and Review
  - B. Small Entities
  - C. Assistance for Small Entities
  - D. Collection of Information
  - E. Federalism
  - F. Unfunded Mandates Reform Act
  - G. Taking of Private Property
  - H. Civil Justice Reform
  - I. Protection of Children
  - J. Indian Tribal Governments
  - K. Energy Effects
  - L. Technical Standards and Incorporation by Reference
  - M. Environment

### **I. Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
<i>Fire Protection rule</i>	“Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment” final rule (81 FR 48220, July 22, 2016)
FR	<b>Federal Register</b>
NFPA 10	National Fire Protection Association Standard for Portable Fire Extinguishers, 2010 edition
OCMI	Officer in Charge, Marine Inspection
OMB	Office of Management and Budget
RA	Regulatory Analyses
§	Section symbol
Subchapter C	46 CFR subchapter C—Uninspected Vessels
Subchapter M	46 CFR subchapter M—Towing Vessels
U.S.C.	United States Code

### **II. Background Information, Legal Authority, and Discussion of Change**

On February 26, 2018, the Coast Guard published an interim final rule with request for comments entitled “Harmonization of Fire Protection Equipment Standards for Towing Vessels” in the **Federal Register** (83 FR 8175). We received no comments. This final rule adopts the interim final rule, with one change. For a detailed description of the regulations finalized by this final rule, see the preamble of the interim final rule (83 FR 8175, February 28, 2018).

The Coast Guard may regulate fire protection equipment on inspected towing vessels under the statutory authority found in 46 U.S.C. 3301 and 3306, which was delegated by the Secretary of Homeland Security to the Coast Guard in DHS Delegation Number 0170.1(II)(92). The interim final rule harmonized fire protection equipment requirements regarding portable and semi-portable fire extinguishers on inspected towing vessels with the requirements for other commercial vessels in Title 46 of the Code of Federal Regulations (CFR), including uninspected towing vessels.

Prior to the publication of the interim final rule, inspected towing vessels were subject to older, less modern fire protection regulations for fire extinguishers than uninspected towing vessels and other commercial vessels. The interim final rule corrected the inconsistent situation where a towing vessel transitioning from uninspected to inspected status would be required to comply with the previous standards instead of the newer standards. The interim final rule provided uniformity in fire protection equipment requirements across uninspected and inspected towing vessel fleets.

In this final rule we add clarifying language to 46 CFR 142.215(d) to eliminate possible ambiguity as to whether existing firefighting equipment must meet the requirements of part 142. The additional language in § 142.215(d) clarifies that this

paragraph applies only to excess existing firefighting equipment and installations. When the Coast Guard issued a final rule establishing inspected towing vessels as a class of vessel,<sup>1</sup> § 142.215(c) provided the requirements for carriage of both new and existing excess firefighting equipment and installations. In the interim final rule, we attempted to clarify the excess firefighting equipment requirements by breaking § 142.215(c) into two sections: §142.215(c) for new equipment and § 142.215(d) for existing equipment. In doing so, we inadvertently omitted the statement that § 142.215(d) only applies to excess existing firefighting equipment and installations. Therefore, we are correcting that omission in this final rule.

Section 553(b)(B) of Title 5 U.S.C. provides an exception from notice and comment rulemaking requirements when an agency finds that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” In the interim final rule, we separated the excess equipment requirements in 46 CFR 142.215(c) into two sections: one for existing firefighting equipment and one for new firefighting equipment. In doing so, however, the Coast Guard did not intend to change the original requirements of § 142.215(c). In the preamble to the Inspection of Towing Vessels final rule, which initially created § 142.215(c), we said we “have added a paragraph (c) to this section to address equipment that is installed but not required by this subpart.” (81 FR 40003, 40057, June 20, 2016). This preamble language makes clear that we intended paragraph (c) to apply to both new and existing excess firefighting equipment on towing vessels.

However, when the Coast Guard created § 142.215(d) in the 2018 interim final rule, the Coast Guard inadvertently omitted the statement that § 142.215(d) only applies to excess existing firefighting equipment and installations. As currently written in the

---

<sup>1</sup> See 81 FR 40003 (June 20, 2016).

interim final rule, § 142.215(d) could be interpreted as a blanket grandfathering clause for existing equipment and installations to forego some or all of the requirements of part 142. This interpretation was never intended. The Regulatory Analyses in the interim final rule described the creation of § 142.215(d) from the last sentence of previous § 142.215(c) as a change to “[e]dit and reorganize paragraph for clarity” and characterized it as a “non-substantive text edit” (83 FR 8177). Additionally, the interim final rule referred to the creation of paragraph (d) in its Cost Analysis section as “Add[ing] a new paragraph to allow equipment beyond the regulatory minimum” (83 FR 8177).

In this final rule, the Coast Guard is adding clarifying language in paragraph (d) to align with our original intent for this section, to allow excess equipment to remain in use if it does not meet all the requirements of 46 CFR part 142. Public comment on this clarifying language is unnecessary, because the change will not alter the fire equipment and installations requirements already required for the towing vessel population. Since the interim final rule, the Coast Guard has not enforced § 142.215(d) as a blanket grandfathering clause, and no existing inspected or uninspected towing vessels will need to do anything new in order to comply with the amended paragraph (d). Because this change to § 142.215(d) clarifies the original intent of the section and does not alter the expectations and duties of the affected population, prior notice and opportunity to comment on the change is unnecessary. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause to forgo notice and comment.

### **III. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or

Executive orders.

A. *Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). A regulatory analysis (RA) follows.

This final rule will implement the interim final rule’s update to the fire safety rules in subchapter M with one change: the addition of clarifying language to §

142.215(d). This RA presents the costs and benefits of this one change. The costs and the benefits of the interim final rule are located in the RA section of that rule (83 FR 8175; February 26, 2018). The Coast Guard believes this will be a cost neutral rule, as we do not expect the addition of clarifying language to § 142.215(d) to generate any costs or quantifiable benefits to either industry or government. Table 1 presents a summary of the impacts of this rule.

**Table 1: Summary of Impacts of the Rule**

<b>Category</b>	<b>Summary</b>
Applicability	Towing vessels required to be inspected under subchapter M
Affected population	5,509 towing vessels
Costs	No costs identified
Benefits	Provides clarifying language on an ambiguously written regulatory section in the interim final rule.

### **Affected Population**

The affected population consists of the U.S.-flagged towing vessels subject to the provisions of subchapter M. The RA performed for the *Inspection of Towing Vessels* final rule identified 5,509 towing vessels that will be affected and concluded that the long-term pattern was a steady-state population. We have no new information to revise that conclusion and will use the population from that rule for this analysis.

### **Cost Analysis**

This rule adapts the interim final rule’s alignment of fire protection and equipment regulations for inspected towing vessels with other commercial vessels, with one additional change. The final rule will add text to clarify the wording in § 142.215(d), which allows extra equipment to remain in service on a vessel even if it does not meet the

specific requirements of the applicable regulations, as long as it is approved by the local OCMI. Table 2 describes the economic impact of this change.

**Table 2: Assessment of Cost Impacts of Changes Made between the Interim Final Rule and Final Rule**

Description of Change Given in the Interim Final Rule	Type of Change	Cost Impact
<b>§ 142.215(d)</b>		
Added additional text to § 142.215(d) to clarify that the section only applies to equipment not required or in excess of the regulatory minimum.	Non-substantive text edit only.	No cost, because all existing vessels are already required to be in compliance with the regulatory requirements of part 142 from when they were uninspected, under subchapter C.

### **Benefits**

This final rule will adapt the interim final rule’s harmonization of the fire safety rules in subchapter M with the fire safety rules applicable to uninspected towing vessels and commercial vessels. The final rule also provides clarifying language in the regulatory text, ensuring that there is no confusion about the intent of § 142.215(d). This section allows equipment in excess of this part to remain in service on a vessel even if it does not meet the specific requirements of the applicable regulations, as long as it is found acceptable by the local OCMI. Without this additional text, the Coast Guard believes the section could be read as a blanket grandfathering clause, and we would have to issue guidance to all OCMIIs to ensure that all required existing equipment meets the requirements of part 142.

#### *B. Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit



organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking.

Our economic analysis concluded that this final rule will have no cost impact and will not affect the small entities that own and operate the towing vessels that comprise the affected population, described above. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

*D. Collection of Information*

This rule calls for no new collection of information or modification of an existing

collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000). This rule covers foreclosed categories as it establishes regulations covering fire extinguishing equipment for towing vessels subject to inspection under 46 U.S.C. 3301 and 3306. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

*F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*G. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

*H. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

*I. Protection of Children*

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between

the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. Energy Effects*

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards and Incorporation by Reference*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. The interim rule, as adopted by this final rule, uses the following updated voluntary consensus standard: NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009. This standard applies to the selection, installation, inspection, maintenance, recharging, and testing of portable fire extinguishers.

Consistent with 1 CFR part 51 incorporation by reference provisions, this material is reasonably available. Interested persons have access to it through their normal course

of business, may purchase it from the organization identified in 46 CFR 136.112(h), or may view a copy by means we have identified in that section.

#### *M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01(series), and Commandant Instruction M16475.ID (COMTINST M16475.1D), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble.

This rule makes final updates to 46 CFR subchapter M which harmonized fire safety standards for inspected towing vessels with those of other commercial vessels. These updated regulations are categorically excluded under paragraphs L52, L54, L57, and L58 of Appendix A, Table 1 of DHS Instruction Manual 023-01(series). Paragraph L52 pertains to regulations concerning vessel operation safety standards; paragraph L54 pertains to regulations which are editorial or procedural; paragraph L57 pertains to regulations involving the inspection and equipping of vessels; and paragraph L58 pertains to regulations concerning equipment approval and carriage requirements.<sup>2</sup>

#### **List of Subjects**

#### **46 CFR Part 142**

---

<sup>2</sup> Please note that the USCG categorical exclusions used in the NEPA analysis for the interim final rule, published on February 26, 2018, appear as cited in Figure 2 of COMDTINST M16475.1D and under paragraph 6(a) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, July 23, 2002). The categorical exclusions that appear in Appendix A, Table 1 of DHS Instruction Manual 023-01 (series) use a different numbering system, but are substantially equivalent to those used for the interim final rule.

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Towing vessels.

For the reasons discussed in the preamble, the Coast Guard adopts the interim final rule amending 46 CFR 136 and 142 as final, except it amends 46 CFR part 142 as follows:

**PART 142—FIRE PROTECTION**

1. The authority citation for part 142 continues to read as follows:

**Authority:** 46 U.S.C. 3103, 3301, 3306, 3308, 3316, 8104, 8904; 33 CFR 1.05; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 142.215(d) to read as follows:

**§ 142.215 Approved equipment.**

\* \* \* \* \*

(d) Existing equipment and installations, of a type not required, or in excess of that required by this part, not meeting the applicable requirements of this part may be continued in service so long as they are in good condition and accepted by the local OCMI or TPO.

Dated: October 18, 2018

J. P. NADEAU,  
Rear Admiral, U.S. Coast Guard  
Assistant Commandant for Prevention Policy.  
[FR Doc. 2018-23314 Filed: 10/24/2018 8:45 am; Publication Date: 10/25/2018]